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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA 20-MJ-10(HKS)  
vs.  
PAUL E. LUBIENECKI, Buffalo, New York  
Defendant. February 12, 2020  
- - - - -X 2:31 p.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE H. KENNETH SCHROEDER, JR.  
UNITED STATES MAGISTRATE JUDGE

JAMES P. KENNEDY, JR., ESQ.  
United States Attorney  
BY: AARON MANGO, ESQ.  
Assistant United States Attorney  
138 Delaware Avenue  
Buffalo, New York 14202  
  
MARIANNE MARIANO, ESQ.  
Federal Public Defender  
BY: BRIAN P. COMERFORD, ESQ.  
300 Pearl Street, Suite 450  
Buffalo, New York 14202  
Appearing on behalf of the Defendant

ALSO PRESENT: Curtis Middlebrooks, U.S. Probation Office  
  
AUDIO RECORDER: Llane M. Guidotti  
  
TRANSCRIBER: Christi A. Macri, FAPR-CRR-RMR-CSR(CA/NY)  
Kenneth B. Keating Federal Building  
100 State Street, Room 2120  
Rochester, New York 14614

(Proceedings recorded by electronic sound recording,  
transcript produced by computer).

P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE CLERK:** United States vs. Paul E. Lubienecki,  
Docket No. 20-M-10. This is the initial appearance.

Assistant United States Attorney Aaron Mango  
appearing on behalf of the Government.

Assistant Federal Public Defender Brian Comerford  
appearing with defendant.

And United States Probation Officer Curtis  
Middlebrooks.

**MAGISTRATE JUDGE SCHROEDER:** Good afternoon.

**MR. MANGO:** Good afternoon, Your Honor.

**MR. COMERFORD:** Good afternoon, Your Honor.

**MAGISTRATE JUDGE SCHROEDER:** Mr. Lubienecki, you are  
charged in a criminal complaint as follows: From on or about  
August 20, 2019 to on or about February 4th, 2019 --

**MR. MANGO:** That's an error, Judge.

**MAGISTRATE JUDGE SCHROEDER:** That should be 2020.

**MR. MANGO:** Yes, Judge.

**MAGISTRATE JUDGE SCHROEDER:** Government moving to  
amend?

**MR. MANGO:** We are, Judge.

**MAGISTRATE JUDGE SCHROEDER:** Any objection,  
Mr. Comerford?

1                   **MR. COMERFORD:** No, Your Honor.

2                   **MAGISTRATE JUDGE SCHROEDER:** From on or about  
3 August 20, 2019 to on or about February 4, 2020, in the  
4 Western District of New York, you the defendant, Paul E.  
5 Lubienecki, with the intent to harass and intimidate another  
6 person, that is, victim, used a facility of interstate and  
7 foreign commerce to engage in a course of conduct that placed  
8 victim in reasonable fear of death and serious bodily injury  
9 to victim and caused or attempted to cause and would  
10 reasonably be expected to cause substantial emotional distress  
11 to the victim, all in violation of Title 18 of the United  
12 States Code, Section 2261A(2)(A) and 2261A(2)(B).

13                   Since this is a criminal complaint and not an  
14 information nor an indictment, there's no requirement that a  
15 plea be entered at this time. But, nevertheless, I will enter  
16 a plea of not guilty on your behalf.

17                   Have you received a copy of this criminal complaint  
18 and the affidavit upon which it is based?

19                   **THE DEFENDANT:** Yes, I have, Your Honor.

20                   **MAGISTRATE JUDGE SCHROEDER:** Because you are now  
21 charged with a crime, you have the right to remain silent.  
22 You cannot be compelled by anyone to answer any questions or  
23 make any statements because anything you might say can be used  
24 against you.

25                   You also have the right to be represented at all

1 stages of this case by an attorney and you have the right to  
2 hire an attorney of your choice. But if you cannot afford to  
3 hire an attorney because of your financial circumstances, the  
4 Court will assign an attorney to represent you and the cost  
5 for that legal service will be paid by the taxpayers of this  
6 country.

7 Do you plan on hiring an attorney of your choice?

8 **MR. COMERFORD:** Judge, he wanted to see if he would  
9 qualify for an assignment. And then if not, then he would  
10 hire someone. I believe he handed up a financial affidavit.

11 **MAGISTRATE JUDGE SCHROEDER:** Is the defendant  
12 willing and agreeable to allowing me to place him under oath  
13 and question him about his financial circumstances?

14 **MR. COMERFORD:** Yes, Judge.

15 **MAGISTRATE JUDGE SCHROEDER:** Mr. Lubienecki, are you  
16 agreeable to allowing me to place you under oath and question  
17 you about your financial circumstances?

18 **THE DEFENDANT:** Yes, I am, Your Honor.

19 **MAGISTRATE JUDGE SCHROEDER:** All right.

20 (WHEREUPON, the defendant was sworn).

21 **MAGISTRATE JUDGE SCHROEDER:** I show you a financial  
22 affidavit for one Paul Lubienecki and I ask you if that's your  
23 signature that appears at the bottom?

24 **THE DEFENDANT:** Yes.

25 **MAGISTRATE JUDGE SCHROEDER:** Did you read this

1 financial affidavit before you signed it?

2 **THE DEFENDANT:** Yes, I did.

3 **MAGISTRATE JUDGE SCHROEDER:** Did you have any  
4 problems in reading it?

5 **THE DEFENDANT:** Um, no, just that the numbers --  
6 they were approximations. I'm not sure.

7 **MAGISTRATE JUDGE SCHROEDER:** Did you have any  
8 problems in understanding what information was being requested  
9 of you?

10 **THE DEFENDANT:** No, I understood that.

11 **MAGISTRATE JUDGE SCHROEDER:** And you indicate you're  
12 employed at State University of New York at Fredonia?

13 **THE DEFENDANT:** Yes.

14 **MAGISTRATE JUDGE SCHROEDER:** As an adjunct --

15 **THE DEFENDANT:** Adjunct lecturer, yes.

16 **MAGISTRATE JUDGE SCHROEDER:** Lecturer. And that you  
17 make approximately \$1,800 a month?

18 **THE DEFENDANT:** Approximately, yes.

19 **MAGISTRATE JUDGE SCHROEDER:** Is that take home or  
20 before --

21 **THE DEFENDANT:** That's before taxes.

22 **MAGISTRATE JUDGE SCHROEDER:** So I gather this is not  
23 a full-time position?

24 **THE DEFENDANT:** Correct.

25 **MAGISTRATE JUDGE SCHROEDER:** Do you have any bank

1 accounts anywhere?

2           **THE DEFENDANT:** We have a savings account and a  
3 checking account.

4           **MAGISTRATE JUDGE SCHROEDER:** And where are they?

5           **THE DEFENDANT:** Northwest Bank and I'm trying to  
6 think of the other bank. It's at another -- it's -- Northwest  
7 has the bulk of our --

8           **MAGISTRATE JUDGE SCHROEDER:** Approximately how much  
9 is in the savings account?

10           **THE DEFENDANT:** Savings account I would say is  
11 approximately \$70,000. It's been a while since I've looked at  
12 that. My wife handles most of our financial transactions.

13           **MAGISTRATE JUDGE SCHROEDER:** And how much  
14 approximately in the checking account?

15           **THE DEFENDANT:** Checking is probably around \$4,000.

16           **MAGISTRATE JUDGE SCHROEDER:** So we're talking about  
17 approximately \$74,000?

18           **THE DEFENDANT:** Yeah, in that area, yes.

19           **MAGISTRATE JUDGE SCHROEDER:** You own any houses?

20           **THE DEFENDANT:** Our house is paid off. We've been  
21 there for about 32 years.

22           **MAGISTRATE JUDGE SCHROEDER:** So it's mortgage free?

23           **THE DEFENDANT:** Mortgage free.

24           **MAGISTRATE JUDGE SCHROEDER:** And you own a number of  
25 automobiles?

1           **THE DEFENDANT:** We have two vehicles. One is paid  
2 off; the other vehicle we have a car loan that we pay.

3           **MAGISTRATE JUDGE SCHROEDER:** So one is a 2016  
4 Impala?

5           **THE DEFENDANT:** Yes.

6           **MAGISTRATE JUDGE SCHROEDER:** I assume that's paid  
7 off?

8           **THE DEFENDANT:** Correct.

9           **MAGISTRATE JUDGE SCHROEDER:** And the other is a 2019  
10 Civic?

11          **THE DEFENDANT:** Cruze.

12          **MAGISTRATE JUDGE SCHROEDER:** And there's money owing  
13 on that?

14          **THE DEFENDANT:** Yes.

15          **MAGISTRATE JUDGE SCHROEDER:** Approximately how much?

16          **THE DEFENDANT:** The monthly payments are around 300,  
17 325 per month.

18          **MAGISTRATE JUDGE SCHROEDER:** And your house is --  
19 the house in Hamburg, 4848 Spring --

20          **THE DEFENDANT:** 4898 Springway.

21          **MAGISTRATE JUDGE SCHROEDER:** And that's mortgage  
22 free?

23          **THE DEFENDANT:** Yes.

24          **MAGISTRATE JUDGE SCHROEDER:** Do you have any other  
25 assets like stocks or bonds?

1                   **THE DEFENDANT:** I have a small stock account in  
2 Wendy's.

3                   **MAGISTRATE JUDGE SCHROEDER:** Approximately how much  
4 is that?

5                   **THE DEFENDANT:** That's probably around -- somewhere,  
6 I would think, around \$70 total.

7                   **MAGISTRATE JUDGE SCHROEDER:** You have a 401(k) as  
8 well or any type of retirement?

9                   **THE DEFENDANT:** I do, but they're very small.  
10 There's very little in those.

11                   **MAGISTRATE JUDGE SCHROEDER:** Do you have any safe  
12 deposit boxes or access to safe deposit boxes?

13                   **THE DEFENDANT:** No. No. No.

14                   **MAGISTRATE JUDGE SCHROEDER:** Do you have any  
15 lawsuits pending where you hope to collect money in the very  
16 near future?

17                   **THE DEFENDANT:** No.

18                   **MAGISTRATE JUDGE SCHROEDER:** All right, I looked at  
19 the cash line of the affidavit and it appears to me it  
20 indicates cash of \$50,000 in a checking account; is that  
21 correct?

22                   **THE DEFENDANT:** No, no, that would not be in the  
23 checking account, no, no.

24                   **MAGISTRATE JUDGE SCHROEDER:** And you've indicated  
25 the savings account had approximately \$70,000?



1           **THE DEFENDANT:** It's -- when I was given this  
2 information -- giving out the information this morning, I was  
3 very confused. The checking account is around 4,000, 5,000;  
4 savings is -- I'd have to double check, it's around 50,000 in  
5 savings, maybe a little more. I'd have to take a look --

6           **MAGISTRATE JUDGE SCHROEDER:** Okay, because now I'm  
7 confused by this \$50,000 figure, that's all.

8           **THE DEFENDANT:** Okay.

9           **MAGISTRATE JUDGE SCHROEDER:** So is it at least  
10 50,000?

11          **THE DEFENDANT:** It's at least 50 in the savings.

12          **MAGISTRATE JUDGE SCHROEDER:** All right. You  
13 indicate you have monthly expenses -- well, on the left-hand  
14 side are those expenses that are listed? I'm having a hard  
15 time making out what they are. Home insurance, is that it?

16          **THE DEFENDANT:** There would be all the insurance,  
17 the homeowner's insurance, that would be yearly.

18          **MAGISTRATE JUDGE SCHROEDER:** Okay, that's \$1,200 a  
19 year?

20          **THE DEFENDANT:** Mm-hmm.

21          **MAGISTRATE JUDGE SCHROEDER:** Then there's some other  
22 form of expense that -- I can't make out your writing -- for  
23 \$500?

24          **THE DEFENDANT:** That would probably -- I think that  
25 was for groceries.

1           **MR. MANGO:** In the Pretrial report, Judge, it says  
2 groceries for \$500.

3           **MAGISTRATE JUDGE SCHROEDER:** All right. And then  
4 there's other listed expenses of \$100, \$700 a year, and then  
5 car payments of \$300, cable of 100, other expenses -- all  
6 right, it would appear to me that with the -- anywhere between  
7 50 and \$70,000 in a savings account you have the wherewithal  
8 to hire an attorney.

9           **THE DEFENDANT:** Okay.

10          **MAGISTRATE JUDGE SCHROEDER:** And that it would not  
11 be fair for me to impose this expense on the taxpayers of this  
12 country.

13          **THE DEFENDANT:** Okay.

14          **MAGISTRATE JUDGE SCHROEDER:** So I'm going to give  
15 you an opportunity time-wise to make arrangements to hire an  
16 attorney, but in the meantime, I would like to at least finish  
17 up this initial appearance and I'll ask Mr. Comerford as an  
18 officer of the court to at least stand in and be available for  
19 you to guide and counsel you in the remainder of this process.

20          **MR. COMERFORD:** Absolutely, Judge. Thank you.

21          **MAGISTRATE JUDGE SCHROEDER:** All right. First off,  
22 let me ask Mr. Lubienecki how much time he thinks he's going  
23 to need to make arrangements to hire an attorney of his  
24 choice?

25          **THE DEFENDANT:** Since I don't really know any

1 lawyers that would be able to handle this, my feeling is two  
2 weeks so I can just try to locate lawyers, figure this all  
3 out.

4 **MAGISTRATE JUDGE SCHROEDER:** Well, that's a pretty  
5 long period of time.

6 **THE DEFENDANT:** Okay.

7 **MAGISTRATE JUDGE SCHROEDER:** And I'm not trying to  
8 be unreasonable, but we do have certain time requirements that  
9 have to be met.

10 And I'm certainly not in a position, nor would I  
11 ever attempt to give anyone legal advice, but Mr. Comerford  
12 certainly would be in a position to assist you in guiding you  
13 as to ways of going about retaining counsel, including going  
14 to the Erie County Bar Association for recommendations that he  
15 and his colleagues in the Federal Public Defender's Office  
16 might want to make.

17 **MR. COMERFORD:** I can do that, Judge. Also, I  
18 proposed two weeks to him and I -- maybe later next week would  
19 be plenty of time, if that's an option?

20 **MAGISTRATE JUDGE SCHROEDER:** Well, today is the 12th  
21 and the 17th is a holiday. So there may be difficulties in  
22 that context of a long weekend of being able to...

23 So if I were to give you, say, until the 21st?

24 **MR. COMERFORD:** Thank you, Judge.

25 **MAGISTRATE JUDGE SCHROEDER:** At 10:30.

1                   **MR. COMERFORD:** That works for me, Judge.

2                   **MR. MANGO:** Yes, Judge.

3                   **MAGISTRATE JUDGE SCHROEDER:** All right. So we'll  
4 schedule this on my calendar for Friday, February the 21st,  
5 2020 at 10:30 for appearance of counsel.

6                   In the meantime, Mr. Mango, what is the  
7 Government's position on bail?

8                   **MR. MANGO:** Judge, thank you. I've had a chance to  
9 review the Pretrial Services report and we are in agreement  
10 with the recommendation set forth therein.

11                   **MAGISTRATE JUDGE SCHROEDER:** And, Mr. Comerford, has  
12 Mr. Lubienecki been supplied with a copy of that  
13 Pretrial Services report?

14                   **MR. COMERFORD:** Yes, Judge. We've reviewed those as  
15 well and we have no objection to them.

16                   The one request I would have requires him to  
17 surrender his passport. That's at home. If he could just  
18 have until the close of business tomorrow to turn that in to  
19 the Clerk's Office?

20                   **MAGISTRATE JUDGE SCHROEDER:** All right. All right,  
21 the Government having no objection to the release of the  
22 defendant on bail, I hereby release defendant subject to the  
23 following terms and conditions:

24                   The defendant is to sign a signature bond in the  
25 amount of \$2,500. Now , what that means, Mr. Lubienecki, is

1 that you do not have to post \$2,500 or put up any property  
2 having that value, but you are entering into a contract with  
3 the Court wherein you agree -- and with the Government -- that  
4 in the event you should violate any term and condition of your  
5 bail that results in a forfeiture of bail, the Government will  
6 have the right to immediately take a judgment against you  
7 personally for \$2,500 and then go out and execute on that  
8 judgment by seizing any property, both personal such as cash,  
9 or real such as real property, or personalty such as  
10 automobiles that you own or have an interest in, and take that  
11 property up to the sum of \$2,500 and keep it and deposit that  
12 money if it's cash, or if it's property sell that property at  
13 a public sale and take the sum of \$2,500 from such sale and  
14 deposit those monies into the Treasury of the United States,  
15 never to be returned to you.

16 Do you understand that?

17 **THE DEFENDANT:** Yes.

18 **MAGISTRATE JUDGE SCHROEDER:** So that's one of the  
19 reasons -- one of the substantive reasons why it's important  
20 for you to make sure you comply with all of the terms and  
21 conditions of bail.

22 In addition to the bond, the defendant is hereby  
23 made subject to the supervision and authority of the United  
24 States Probation Office. And what that means is you must obey  
25 and carry out and follow through with every reasonable

1 directive given to you by a representative of that office.

2           Should you fail to do that, that also can result in  
3 your bail being revoked and your being locked up and kept  
4 locked up until this matter is completed.

5           Do you understand?

6           **THE DEFENDANT:** Yes.

7           **MAGISTRATE JUDGE SCHROEDER:** You are hereby directed  
8 to avoid all contact, both directly or indirectly, with any  
9 person or persons who are or who may become a potential victim  
10 or witness in this case that you are aware of or should be  
11 aware of or should hereinafter become aware of.

12           So that means no contact directly or indirectly  
13 with witnesses or persons involved in this case.

14           Once you have your attorney, your attorney will be  
15 able to make those contacts. So if there are things that you  
16 think need to be explored or investigated or carried out in  
17 the way of contacts, you'll be able to do that through your  
18 attorney rather than you, all right?

19           **THE DEFENDANT:** Yes.

20           **MAGISTRATE JUDGE SCHROEDER:** I'm going to give you  
21 until tomorrow February the 13th, 2020 at 5 p.m. to surrender  
22 any passports or any other form of international travel  
23 documents that you may have, such as but not limited to, an  
24 enhanced driver's license or any other form of documentation  
25 that would allow you to travel internationally.

1           And while this case is pending you are not to  
2 attempt to renew any passports or travel documents and you are  
3 not to apply for any travel documents.

4           And the passport will be surrendered to the Clerk  
5 of the Court on the second floor.

6           **MR. COMERFORD:** Judge, he does have an enhanced  
7 driver's license. I think usually what happens is Probation  
8 will direct the defendant to go to the DMV, they're able to  
9 turn that in, have it turned into a regular driver's license.  
10 They give him paperwork, they have to turn that into  
11 Probation. He'll do that.

12           **MAGISTRATE JUDGE SCHROEDER:** Right. I was going to  
13 say on an enhanced driver's license I know they're well  
14 experienced in the Probation Office as far as getting an  
15 unenhanced driver's license and the necessary paperwork.

16           So the probation officer will explain that to you.

17           Your travel is hereby restricted to the continental  
18 United States unless you have received permission from the  
19 Court or the Probation Office to travel outside of the  
20 continental United States to such places as Mexico or Canada  
21 or the Caribbean, wherever, if you have vacations planned.

22           You are hereby prohibited from possessing or having  
23 access to any firearms or destructive devices or dangerous  
24 instruments. If you do have such, you are required to make  
25 that known to your attorney, whoever that is going to be, and

1 I am hereby directing that attorney, whoever it may be, as an  
2 officer of the court to then make arrangements with counsel  
3 for the Government so that arrangements can be made for the  
4 surrender and safekeeping of those until this matter has been  
5 resolved.

6           You are also required to report any contact you  
7 have with any law enforcement personnel for any reason  
8 whatsoever, be it as minor as a vehicle and traffic stop or  
9 for any other reason, and that report must be made to the  
10 United States Probation Office within 72 hours after the  
11 contact has occurred.

12           Upon signing the signature bond in the amount of  
13 \$2,500, and any additional processing by either the  
14 U.S. Marshal's Service and/or the U.S. Probation Office, the  
15 defendant is hereby released on bail subject to those terms  
16 and conditions as I have stated them to be.

17           Once again, should you violate any one of those  
18 terms or conditions that can result in your being -- having  
19 your bail revoked and your being locked up and kept locked up  
20 until this matter is completed.

21           Do you understand?

22           **THE DEFENDANT:** Yes.

23           **MAGISTRATE JUDGE SCHROEDER:** So we will see you back  
24 here on February 21st, 2020 at 10:30. Hopefully at that time  
25 you will have a retained attorney and we will then address the



1 items that need to be addressed, including but not limited to,  
2 the question of whether there is going to be need to hold what  
3 is called a "preliminary hearing."

4 Under the law you have the right to have a  
5 preliminary hearing to determine whether there is legal  
6 probable cause for this charge to be made against you.

7 And because a preliminary hearing involves legal  
8 issues and legal procedures, you will be at a disadvantage to  
9 ask that -- to ask to have that hearing now, even though the  
10 law says you could demand to have that hearing now, because in  
11 my opinion you would be at a serious disadvantage to do that  
12 since you don't have an attorney and the Government's attorney  
13 is here.

14 Therefore, it is my further opinion that it is in  
15 your best interest to wait until you do have an attorney here  
16 to represent you and that -- at that time we will discuss  
17 whether there is going to be a need for a preliminary hearing  
18 as well as address any other legal issues that will need to be  
19 addressed.

20 Do you agree?

21 **THE DEFENDANT:** Yes, yes, I do.

22 **MAGISTRATE JUDGE SCHROEDER:** All right. Anything  
23 further?

24 **MR. MANGO:** Judge, I would just move for an  
25 exclusion of time pursuant to 18, United States Code, Section

1 3161(h)(7)(A) and (h)(7)(B)(iv).

2 **MAGISTRATE JUDGE SCHROEDER:** Right.

3 **MR. COMERFORD:** We agree, Judge.

4 **MAGISTRATE JUDGE SCHROEDER:** All right, I'm  
5 adjourning this matter until February 21st, 2020 for the  
6 purpose of allowing the defendant to effectuate his  
7 constitutional right to hire an attorney of his choice. That  
8 constitutional right outweighs the public's right or interest  
9 to a speedy trial or disposition in this matter and,  
10 therefore, is validly excludable and is hereby so excluded for  
11 purposes of the time requirements set forth in the Speedy  
12 Trial Act as well as the time requirements set forth in Rule  
13 5.1 of the Federal Rules of Criminal Procedure or any other  
14 statutory time requirements that might be applicable.

15 And, Mr. Mango, will you provide an order of  
16 exclusion to that effect, please?

17 **MR. MANGO:** Yes, Judge.

18 **MAGISTRATE JUDGE SCHROEDER:** Anything else at this  
19 time?

20 **MR. MANGO:** No, Judge. Thank you.

21 **MR. COMERFORD:** No, Your Honor, thank you.

22 **MAGISTRATE JUDGE SCHROEDER:** Thank you?

23 **THE DEFENDANT:** Thank you.

24 (WHEREUPON, proceedings adjourned at 2:51 p.m.)

25 \* \* \*

**CERTIFICATE OF TRANSCRIBER**

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of proceedings from the official electronic sound recording of the proceedings in the United States District Court for the Western District of New York before the Honorable H. Kenneth Schroeder, Jr. on February 12th, 2020.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)  
Official Court Reporter